IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.821 OF 2005
WITH
CIVIL APPLICATION NO.959 OF 2005

Deepak Bhau Labdhe ..Appellant.
Vs.
Municipal Corporation of Gr. Bombay ..Respondent.

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Mr. R.A. Thorat for the Appellant.
Ms. Geeta Joglekar for the BMC.

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CORAM : DR.D.Y.CHANDRACHUD, J.

21st November, 2005.

P.C. :

1. Admit. By consent, heard forthwith.

2. The Appellant is the original plaintiff in a suit instituted before the City Civil Court seeking an injunction restraining the Municipal Corporation from demolishing the premises in his occupation or from dispossessing him of the premises without due process of law. The premises consists of a structure which is described as Shop No. No.33, admeasuring 5 ft. x 5 ft. and known as Uttam Pan & General Stores situated at Janu Compound, Near Shantaram Talao, Kurar Village, Malad (East), Mumbai 400 097. The Notice

of Motion instituted by the Appellant has been dismissed by the impugned judgment and order dated 16th June, 2005. The case of the Appellant is that he is in absolute use and occupation of the aforesaid structure which is made up of brick masonry walls from three sides and with an iron rolling shutter on the front side. The Appellant has been issued a trade licence by the Municipal Corporation under Section 394 of the Mumbai Municipal Corporation Act, 1888. The Appellant also holds a shops and establishment licence, a licence issued under the Maharashtra Prevention of Food Adulteration Rules and electricity bills. The cause of action for the institution of the suit is stated to have arisen on the threat of a junior engineer of the Municipal Corporation in the P/N ward to demolish the suit premises, when he visited the site on 5th June, 2004 together with two members of his staff.

3. In the written statement which has been filed on behalf of the Municipal Corporation, it has been stated that the shop under reference was allotted to one Mr. Ismail Hussein Mamdani as his structure was affected by road widening at Kurar Village, Malad (East), Mumbai 400 097. The aforesaid allottee is stated to be the actual owner of Shop No.33. According to the Corporation, the

Appellant encroached upon the shop. From the written statement filed by the Municipal Corporation, it would appear that the shop in question was allotted to a person whose erstwhile structure was affected by road widening. It is not the case of the Corporation that the structure is unauthorized. The Corporation's case is that the Appellant has encroached upon the shop. If that be so, it is open to the Corporation to adopt necessary steps in accordance with law. The Corporation has ample powers under Section 105-B of the Mumbai Municipal Corporation Act, 1888 in respect of Corporation's premises. The Learned Trial Judge while dismissing the Motion was of the view that the Appellant is not the owner of the premises and that he has no documents showing the authorized occupation and possession of the structure. The Court held that the issuance of a trade licence did not give any right to the Appellant to continue his “encroached possession”. Even assuming that this is so, the Corporation is at liberty to take steps in accordance with law. The Motion of the Appellant was for a direction to the effect that the Municipal Corporation should not be permitted to take coercive steps without due process in accordance with law. The approach of the Learned Trial Judge, in my view, is misconceived. If according to the Corporation, the Appellant has

unauthorizedly encroached upon its premises, it would be open to the Corporation to take necessary steps in accordance with law. In these circumstances, this Appeal is allowed. The order of the Learned Trial Judge dated 16th June, 2005 in the Notice of Motion is quashed and set aside. There shall be a direction to the effect that the Corporation shall not dispossess the Appellant or take any coercive steps against the Appellant or the structure in question without recourse to its remedies in accordance with law.

4. In view of the order which has been passed in this Appeal, Counsel appearing for the Appellant prays for leave to withdraw the suit. The suit before the City Civil Court (L. C. Suit 2654 of 2004) accordingly is permitted to be withdrawn. The Appeal is accordingly disposed of.

In view of the disposal of the Appeal from Order, the Civil Application has been rendered infructuous and is accordingly disposed of.